

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:21-cv-00320-MR-WCM

JOHNNIE R. SIMMONS, JR.

Plaintiff,

v.

SHELBY POLICE DEPARTMENT,
NICHOLAS MARLOW

Shelby Police Officer/Security at Walmart,

JOHN DOE 1

Shelby Police Officer/Security at Walmart Store)

Defendants.

ORDER

This matter is before the Court on a Motion to Dismiss Plaintiff's Complaint filed by Defendant the Shelby Police Department (the "Motion to Dismiss," Doc. 5).

On October 25, 2021, Plaintiff, who was then proceeding *pro se*, filed a Complaint against the Shelby Police Department, Nicholas Marlow, and "John Doe 1." Doc. 1.

On December 14, 2021, the Shelby Police Department filed the Motion to Dismiss. Doc. 5.

On January 12, 2022, Plaintiff was granted leave to file a comprehensive Amended Complaint that removed Plaintiff's claims against the Shelby Police Department. Doc. 14. Plaintiff timely filed that Amended Complaint on

January 20, 2022. Doc. 15.¹

“The general rule ... is that an amended pleading supersedes the original pleading, rendering the original pleading of no effect.” Young v. City of Mount Ranier, 238 F.3d 567, 573 (4th Cir. 2001); see also Fawzy v. Wauquiez Boats SNC, 873 F.3d 451, 455 (4th Cir. 2017) (“Because a properly filed amended complaint supersedes the original one and becomes the operative complaint in the case, it renders the original complaint ‘of no effect.’”).

With the filing of Plaintiff’s Amended Complaint, the Motion to Dismiss is now moot. See Colin v. Marconi Commerce Systems Employees’ Retirement Plan, 335 F.Supp.2d 590, 614 (M.D.N.C. 2004) (“Earlier motions made by Defendants were filed prior to and have been rendered moot by Plaintiffs’ filing of the Second Amended Complaint”); Ledford v. Eastern Band of Cherokee Indians, No. 1:20-CV-005-MR-DCK, 2020 WL 1042235 at 1 (W.D.N.C. March 3, 2020) (“It is well settled that a timely-filed amended pleading supersedes the original pleading, and that motions directed at superseded pleadings may be denied as moot”). This denial is without prejudice to Defendant’s right to challenge the Amended Complaint, if appropriate.

¹ The Amended Complaint also does not contain claims against former Defendant John Doe 1.

IT IS THEREFORE ORDERED that the Motion to Dismiss Plaintiff's Complaint filed by Defendant the Shelby Police Department (Doc. 5) is **DENIED AS MOOT.**

Signed: January 21, 2022

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf
United States Magistrate Judge

